

to the agreement, would, under the rules of the court, have been entitled to leave to amend.

The parties further agreed, that the admission on the part of the complainant, in reference to the answer of McAttee, and the admission on the part of the defendant, in regard to exhibit No. 2, and the certificate of the crier thereto attached, should not preclude the complainants from contending before the Chancellor, that said exhibit and certificate is evidence of notice to the defendant, of their alleged equitable claim; nor, on the other hand, deprive the defendant McAttee, of the right of insisting that they do not give him such notice. It was also agreed that the *cestui que trusts* in this case are married women, and that the complainant Gill was duly appointed and qualified as trustee, by giving bond, as alleged in the bill, and that the authority of Schley as trustee was revoked, as in the bill is likewise stated.

A portion of the argument has turned upon the frame of the answer of McAttee, it being insisted upon the one side, that it does, and upon the other that it does not, place him in the attitude and clothe him with the rights of a *bona fide* purchaser without notice, and, perhaps, in view of the authorities which have been referred to, and especially of what was said by the Court of Appeals in *Baynard vs. Norris et al.* 5 Gill, 481, 482, it would be difficult to support this answer, as presenting that defence in the form in which it must appear to be available.

It may be, however, that the agreement in this case removes the objection to the form of the answer, it being therein stipulated, that the answer *presents the question*, whether he, (McAttee,) as a *bona fide* purchaser without notice of the alleged equitable lien of the complainants, is bound by said lien, or whether the land so purchased by him, would be subject to said lien—the qualification in the subsequent part of the agreement having reference rather to the question, whether the exhibit No. 2 and the certificate attached to it furnish evidence of notice in fact or not, than to the question, whether the answer itself, consistently with the rules of equity pleading, places the defendant in an attitude to rely upon that defence.